Dinkar Khindria and anr. Vs. Union of India (Uoi) and ors.

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SooperKanoon Citation : sooperkanoon.com/707010

Court : Delhi

Decided On : Sep-23-2008

Reported in : 2008(134)ECC10; 2008(160)LC10(Delhi); 2008(231)ELT47(Del); 2008[12]STR419

Judge : Badar Durrez Ahmed and; Rajiv Shakdher, JJ.

Appeal No. : Cus. A.C. 8-9/2006

Appellant : Dinkar Khindria and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mukesh Anand, ; Shailesh Tiwari and ; Zeba Tarannum Khan

Advocate for Pet/Ap. : S.C. Kathuria and; Nilesh Sawhney, Advs

Judgement :

Badar Durrez Ahmed, J.

1. This appeal is directed against the orders dated 25.07.2000 and 03.06.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal. The delay in filing this appeal has already been condoned by virtue of the order dated 13.02.2007 by our predecessor Bench.

2. This case has arisen in unusual circumstances and this would be apparent from going through the orders passed by this Court on 04.12.2007 and 29.01.2008. In the order dated 04.12.2007 it is noted that after the final order was passed by the Tribunal on 25.07.2000, a rectification application had been filed by the appellant on 10.11.2002, which was dismissed for non-prosecution on 22.03.2004. The order dated 22.03.2004 noted that the application was listed for hearing on 13.02.2004 when the learned Counsel appeared on behalf of the appellants and the matter had been adjourned in his presence to the adjourned date i.e., 22.03.2004.

3. The order dated 04.12.2007 passed by this Court further notes that the appellants filed another application for rectification but that application was neither signed nor was there an authorization and, therefore, the same was dismissed on 19.12.2004. A third application for rectification was filed, which was dismissed by the order dated 03.06.2005, which is also challenged in the present appeal.

4. More importantly, the order dated 04.12.2007 passed by this Court records that on perusal of the final order dated 05.07.2000, it was found that there was a handwritten order / sheet which was apparently signed by the members of the Tribunal, a certified copy of which had been placed on record by the learned Counsel for the appellants. The said order indicates that orders had been reserved but it is noted that it also indicates that an order was intended to be passed and it was signed on various dates such as 05.07.2000 and 25.07.2000. In view of the discrepancies between the handwritten order/ sheet and the final order dated 25.07.2000, this Court wanted to peruse the original file of C/54/93/NB of 1993 and for this purpose directed issuance of notice to the Registrar of the Tribunal to produce the original file pertaining to the said appeal filed by Dinesh Khindria decided by Sh. G. R. Sharma, Member (Technical) and Sh. A. C. C. Unni, Member (Judicial). The notice was returnable on 17.01.2008.

5. However, despite such notice, the Registrar of the Tribunal was neither present nor was any nominee on his behalf present. The records were also not made available to the Court. This Court took a serious view of the matter and indicated that in case of non-compliance of its orders, it would have no option but to take

coercive steps. The matter was renotified for 29.01.2008.

6. On 29.01.2008 the original file had been produced by the Registrar (Mr S. Chandran) of the Tribunal, who was also present in person.

7. After examining the record available in the original file and particularly page 73 thereof this Court noted that the following handwritten order had been passed:

Heard both sides. [Gold allowed to be redeemed on payment of a fine of Rs. In case gold is already sold and hence it cannot be so redeemed. As the gold is sold be allowed to be redeemed and the redemption fine is determined to be Rs 1.5 lakhs. As the gold is no longer available this amount of Rs 1.5 lakh should be paid to the appellant who has claimed the gold.]

This Court also noted that the above order had been signed on 05.07.2000 but the portion in parentheses was cut out and was changed to:

Order reserved.

This Court further noted that when the order was eventually pronounced on 25.07.2000 an entirely opposite conclusion was arrived at and the Tribunal dismissed the appeal filed by the petitioner, even though, in terms of the handwritten order it had been allowed on 05.07.2000. At that point of time the learned Counsel for the appellants had also informed this Court that as per his information the file was missing from the concerned branch of the Tribunal for almost 11/2 years thereafter.

8. This Court, as indicated in the order dated 29.01.2008, took the view that after an order had been written and signed, it could not subsequently be changed and the decision reversed, whatever be the circumstances and, particularly, without notice to any of the parties. This Court was of the view that this amounted to tampering with the judicial record. A serious note was taken by this Court and it was observed that if such matters were allowed to go unchecked, orders passed by the Tribunal would have no sanctity because the same could be changed at will and different conclusions could be arrived at on different dates in respect of the same case. Under the said circumstances, this Court requested the President of

the Tribunal to conduct an enquiry into the matter and to indicate the detailed facts so that this Court could take appropriate steps.

9. The President of the Tribunal has submitted a report dated 31.03.2008. The material portions of the report read as under:

4. It appears to me that after hearing the parties, the Members of the Bench tentatively decided to release the seized gold on payment of redemption fine or, at least, Shri G. R. Sharma decided. However, some difference of opinion apparently was there, or had arisen, which is evidence from the fact that the words 'gold allowed to be redeemed on payment of a fine of Rs. ' Were cut and another order was written to the effect that as the gold is no longer available, the amount may be paid to the appellants, who were its claimants. It appears that the difference of opinion persisted with the result that, finally, order was reserved for consideration. It may be kept in mind that all the aforementioned orders were recorded by G. R. Sharma in his own hand. He put his initials in the margin of the order sheet which he had cut. It may also be mentioned that the two parts of the hand written order-quoted hereinabove - were scored out one after the other which is evidence from the fact that the scoring out of the former was horizontal while the latter part was scored out vertically.

5. I find that there is a practice in the Tribunal that short orders are sometimes recorded by hand, ordinarily by the senior Member presiding the Bench. In the instant case, the senior Member purported to record an order regarding redemption but there was an apparent difference of opinion and, finally, the other Member i.e Shri A. C. C. Unni, was requested to write the judgment. The order sheet of 05.07.2000, as recorded, was signed not only by Shri G. R. Sharma, but also by Shri A. C. C. Unni, on the same day i.e 05.07.2000, but there is nothing to indicate that the order was pronounced.

6. It appears to me that despite signing the order Shri A. C. Unni expressed his dissent resulting in scoring out of the entire order sheet, as recorded, and reserving of order. It is relevant that the appeal was finally dismissed by order which was written by Shri A. C. C. Unni. Apparently, Shri A. C. C. Unni was not in agreement with Shri G. R. Sharma directing redemption of the goods or payment

of the amount of redemption fine of Rs 1.50 lakhs and, therefore, insisted on to remove the order. The only thing is that he also signed the order, as recorded, which part apparently is not understandable to me. It may not be out of place to mention that the dispute involved in the appeal appears to be contentious one. In the past also, there was difference of mind and as per opinion of the third Member, the matter was referred to Larger Bench. In my respectful opinion, in the facts and circumstances, spelt out above, not much should be read in the alleged alteration to suggest some bad motive or the like.

7. Be that as it may, both Shri G. R. Sharma and Shri A. C. C. Unni have demitted their office as members of the Tribunal long back and in my view, at this stage, the matter may not be pursued further.

10. The above extract of the report submitted by the President of the Tribunal clearly indicates that the handwritten order passed on 05.07.2000 was indeed signed by both the members and that it was only scored out subsequently. The report of the President of the Tribunal also indicates that both the members of the Tribunal, who were party to the said orders and cancellation of orders, have since demitted office as members of the Tribunal.

11. It is obvious that the handwritten order dated 05.07.2000 had been signed by both the members but they had subsequently scored out the order and it is only thereafter that a fresh order was passed on 25.07.2000.

12. However, the counsel for the parties are agreed that in these special circumstances since there is a great deal of confusion, it would be appropriate if the impugned orders are set aside and the matter is remanded to the Tribunal for a consideration afresh after hearing both the parties. While we are passing a direction to this effect, we would also like to make it known to the Tribunal that what has been done in this particular case does not behove of judicial proceedings. Once an order is passed and it is signed by the members, the same cannot be altered unless law provides for a review of the same and that too only after hearing the parties. We are not pursuing the matter in respect of the particular members who were party to the said proceedings because of the request made by the President of the Tribunal and particularly because the said

members have demitted office as members of the Tribunal. However, the Tribunal should ensure that such unsavory incidents should not occur in the course of their conduct of judicial proceedings. It is hoped that the President of the Tribunal shall inform the other members of the Tribunal about the passing of this order.

13. With the above observations we set aside the impugned orders dated 25.07.2000 and 03.06.2005 and remit the matter to the Tribunal for a consideration afresh. The Tribunal will also take note of its decision in the case of Mohit Thakore v. Collector of Customs, New Delhi , which was in respect of a co-passenger and who was involved with the present appellants in the same case under similar circumstances.

14. The parties shall appear before the Tribunal for directions on 05.11.2008. The Tribunal shall expedite the hearing of the appeal and shall dispose of the same within three months thereafter.